

1. Craig A. Washington (“Plaintiff”) filed his original lawsuit on May 10, 2023. (Doc. 1).
2. Judge Gallagher was served in this lawsuit on July 3, 2023. (Doc. 25-1).
3. Only four (4) days later, on July 7, 2023, Judge Gallagher filed his Motion to Dismiss. (Doc. 12).
4. Plaintiff has never filed a Response in Opposition to Judge Gallagher’s Motion to Dismiss, and as such, is unopposed to dismissal of the claims against Judge Gallagher. (Doc. 16, citing LOCAL RULE CV-7(D)(2)).

5. On September 15, 2023, Plaintiff asked this Court for a default judgment against Judge Gallagher in his individual capacity. (Doc. 25).
6. Plaintiff is unable to get such relief from the Court as a matter of law.
7. Federal Rule of Civil Procedure 55 governs the entry of default and default judgment. A default occurs when a defendant has failed to plead or otherwise defend against to the complaint within the time required by the Federal Rules of Civil Procedure. FED. R. CIV. P. 55(a).
8. “Default judgments are a drastic remedy, not favored by the Federal Rules and resorted to by courts only in extreme situations... they are available only when the adversary process has been halted because of an essentially unresponsive party.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989) (citations and internal quotation marks omitted).
9. Plaintiff has not demonstrated an entitlement to default against Judge Gallagher.
10. “Under the Federal Rules of Civil Procedure, Defendant’s Motion to Dismiss is a responsive pleading, filed before Plaintiff’s motion for default judgment and thus Defendant is not in default and Plaintiff’s Motion for Default Judgment is denied.” *See Dunn v. Gen. Motors Acceptance Corp. Mortg., LLC*, No. A-10-CA-749-SS, 2011 WL 13324042, at \*1 (W.D. Tex. Apr. 1, 2011).
11. Judge Gallagher filed his responsive pleading on July 7, 2023 (Doc. 12), only 4 days after service. (Doc. 25-1).
12. As briefed in Judge Gallagher’s motion to dismiss, Plaintiff has not presented a claim for which he is entitled to relief. (Doc. 12).

13. To the extent that Plaintiff pretends that Judge Gallagher has not filed a responsive pleading in his individual capacity because the Office of the Attorney General of Texas may not represent individual capacity defendants, the uncontested law on that subject has repeatedly determined “**This argument is meritless.**” *See Easley v. Martin*, 19 F.3d 15; 1994 WL 93415, at \*5–6 (5th Cir. Mar.15, 1994) (per curiam) (unpublished) (emphasis added), citing Tex. CIV. PRAC. & REM. CODE §§ 104.001 and 104.004; *see also Enriquez v. Estelle*, 427 F. App'x 305, 307 (5th Cir. 2011) (emphasis added).
14. Because of this, Plaintiff’s motion must be denied.

### **CONCLUSION**

This Court should deny Plaintiff’s motion for default judgment as described hereinabove and should dismiss Plaintiff’s claims against Judge Gallagher as briefed in his Motion to Dismiss. (Doc. 12).

WHEREFORE, Defendant Judge George Gallagher prays that Plaintiff takes nothing by his suit.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that a copy of the above *Judge George Gallagher's Response to Motion for Default Judgment* was served on the **27th day of September, 2023**, upon all parties who have entered an appearance, using the CM/ECF system.

/s/ Scot M. Graydon  
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